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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 416

FRIEDRICH WILHELM KUEHN, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The per curiam opinion of the circuit court of appeals (R. 404) has not yet been reported. The opinion of the district court relating to petitioner's case (R. 25–46, 50–55) is reported *sub nom. United States* v. *Holtz* at 54 F. Supp. 63, 65–72, 73–75. The district court's findings of fact and conclusions of law pertaining to petitioner appear at pages 100–113 and 158–164 of the record.[1]

[1] The printed record here, designated "R.," does not include any of the exhibits or the transcript of the consolidated trial, designated "Tr.," which have been lodged with the Clerk of this Court.

JURISDICTION

The judgment of the circuit court of appeals was entered July 28, 1947 (R. 405), and a petition for rehearing was denied August 25, 1947 (R. 406). The petition for a writ of certiorari was filed October 27, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether in the proceedings for petitioner's denaturalization the Government established by clear, unequivocal, and convincing evidence that he had fraudulently obtained his certificate of naturalization in 1935 by falsely swearing true faith and allegiance to the United States and attachment to the principles of the Constitution, and by falsely swearing that he absolutely and entirely renounced all allegiance to the German Reich.

STATUTES INVOLVED

Section 338 of the Nationality Act of 1940, c. 876, 54 Stat. 1137, 1158 (8 U. S. C. 738) provides:

> (a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute procedings in any court specified in subsection (a) of section 301 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revok-

ing and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured.[2]

STATEMENT

Petitioner, who was born in Germany in 1901 (R. 210), arrived in the United States in December 1922 (R. 210; Pl. Exs. 6, 7, 8) and has remained here ever since (R. 210–211). One of the witnesses below testified that petitioner had shown him a picture of himself in a uniform and said he had served in the German army during the first World War (R. 260). Petitioner denied the truth of that testimony (R. 236, 322–323). He testified that he first filed a declaration of intention to become a citizen in 1928 in Santa Rosa, Sonoma County, California, that this declaration was mislaid in the courthouse and that he filed

[2] The predecessor Section 15 of the Act of June 29, 1906, c. 3592, 34 Stat. 601, as amended, 8 U. S. C. (1934 ed.) 405, provided at the time of petitioner's naturalization:

"It shall be the duty of the United States district attorneys for the respective districts, or the Commissioner or Deputy Commissioner of Naturalization, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. * * *"

another declaration in 1933 (R. 211). Records introduced by the Government show that petitioner's declaration was filed on November 19, 1931 (Pl. Ex. 6, R. 248–249), that his petition for naturalization was filed on February 7, 1935 (Pl. Ex. 7, R. 248–249), and that he took the oath of allegiance and was admitted to citizenship in the Superior Court for Sonoma County, California, on May 16, 1935 (Pl. Ex. 8, R. 248–249).

In February 1943, the United States, proceeding under Section 338 of the Nationality Act of 1940, *supra,* pp. 2–3, instituted a suit in the District Court for the Northern District of California to cancel petitioner's certificate of naturalization on the ground that it had been procured by fraud, in that he had falsely and fraudulently declared on oath that he was attached to the principles of the Constitution of the United States and that he would bear true faith and allegiance to the United States, when in fact he was not and is not so attached and then had and still retained allegiance to the government of Germany (R. 2–6). On motion of the United States, there being no objection by any of the defendants, the proceedings against petitioner and twenty-three other persons were consolidated for the purpose of receiving evidence common to each case concerning the organization, aims, and activities of the German-American Bund and its affiliates (R. 9–10). After the joint trial on this issue, the district judge entered exhaustive findings of fact in which

he found, *inter alia,* that the Bund and its predecessors actively promoted, through various organizational and propaganda means, doctrines—such as the supremacy of the German "Volk," the "leadership principle," and that all people of "German" blood must serve the interests of Germany—all of which tended to incite a contempt for democratic institutions and the Government of the United States and to subvert the allegiance due the United States (R. 102–113). On the basis of these findings, the district judge concluded as a matter of law that the Bund was a militant "Fifth Column" antagonistic to our Government and institutions and that one who believed in its philosophy could not at the same time be loyal to the United States nor attached to the principles of our Constitution and laws (R. 113).

Thereafter, petitioner's case was tried individually. At its conclusion, the district court entered detailed findings of fact (R. 158–163) which contain a full account of petitioner's activities and on the basis of which the judge concluded that petitioner's certificate of naturalization was illegally and fraudulently procured and should be cancelled (R. 164). On appeal to the Circuit Court of Appeals for the Ninth Circuit, the district court's judgment (R. 176–178) was affirmed, *per curiam,* "on the grounds and for the reasons stated in [the District Court's] opinion * * *" (R. 404, 405).

The evidence adduced at petitioner's individual trial may be summarized as follows:

Petitioner testified (R. 212) that in June 1935, about one month after he was naturalized, he became a member of the Petaluma, California, group of the "Friends of the New Germany," a predecessor of the Bund (see, e. g., R. 102, 220) which the district court found espoused and promoted the same doctrines as the latter organization. However, the record books of the Petaluma group show that he paid dues and was treated as a member from and after March 22, 1935, more than one month *before* he was naturalized (Pl. Ex. 354, p. 39; Tr. 649; R. 242, 356–358). In any event, prior to his naturalization, petitioner made a trip to Los Angeles and met Herman Schwinn, the district leader of the organization. Thereafter, the Petaluma group was formed. (R. 305.) Petitioner was, as he testified, chosen "as kind of spokesman or the head of the unit in Petaluma" (R. 214, 231).

It was shown that petitioner attended numerous meetings of the Bund both in Santa Rosa and San Francisco, at some of which Bund leaders spoke (R. 209, 223, 224, 303, 315; Tr. 731), that at some of the meetings he wore the official O. D. uniform consisting of white shirt, dark trousers, uniform cap, arm band and shoulder belt (R. 226–228, 294, 303),[3] that he gave the Nazi salute and

[3] Petitioner testified that he burned the distinctive items—the cap, belt and armband—in 1938 (R. 233–234, 367).

the Nazi greeting "Seig Heil" (R. 229, 303–304), that he sang the "Horst Wessel" song (R. 230), that he passed out Bund literature (R. 295–296), that he had his picture taken along with other members of the uniformed groups (Pl. Ex. 340, Tr. 738–739; Pl. Ex. 338, Tr. 708; R. 209, 227–228), and that he received and, admittedly, at least, scanned or "glanced at" various Bund or Nazi literature (R. 216, 235).

Petitioner actively promoted various affairs of the organization. For example, he arranged a reception in Petaluma on June 29, 1938, for Herman Schwinn and prepared the invitation in which he stated "The Aryan Bookstore will also be present" (Pl. Ex. 2, R. 243–245). While petitioner's testimony was vague as to the significance of the quoted statement, he indicated that the term "Aryan Bookstore" applied to the Bund literature which was available to those attending such gatherings (R. 249–250). Petitioner also prepared the notices for another Bund gathering in 1936 for the showing of a German film concerning the German warship *Karlsruhe* (Pl. Ex. 3, R. 245–246).

There was also evidence that on several occasions petitioner spoke or wrote in defense or explanation of Bund activities. On June 17, 1938, he wrote a letter to the Associated Farmers of California concerning the swastika, enclosing a circular relative to the purposes of the Bund, and stating that further information could be obtained

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from Schwinn (Pl. Ex. 4, R. 246–247). At another time he addressed an American Legion group in San Francisco on the purposes of the Bund and, in the course of his speech, said: "We desire and intend to attain the friendship of all patriotic American organizations, determined with us to maintain or reconstitute these our United States a sovereign and independent, morally and ethically clean, socially just and God-fearing nation, and hence the uncompromising enemies of international, atheistic, Jewish Marxism in all its guises and disguises. Let white people run this country, as they did before the Jewish invasion." (Pl. Ex. 5, R. 247–248, set out in full in the Appendix to the Petition, pp. ix–xv). It was also shown on petitioner's cross-examination, though he first denied it, that he had assisted the organization's collection of food for transmission to Germany for German Winter Relief (Pl. Ex. 9, R. 359–361).

In addition to the foregoing evidence as to petitioner's affiliation with and efforts on behalf of the Bund, the Government also showed that he wore a swastika ring (R. 240, 296–297, 311)[4] and that swastika flags and pictures of Hitler were prominently displayed in the den of his home (R.

[4] Petitioner testified that he threw the ring in Petaluma Creek when he quit the Bund (R. 240–241); he had previously testified that he quit in late 1938 or early 1939 (R. 212, 353). But a government witness testified that she saw the ring on his finger in the spring of 1940 (R. 311).

238, 252, 255, 260–261, 264, 271, 302–303, 308–309, 311, 362, 394). He also had a little stand in this den on which were mounted the colors or symbols of Germany, Italy, and Japan (R. 237, 239, 326). His former mother-in-law, Mrs. Rahunc, testified that in the presence of her and his wife petitioner kissed Hitler's picture and said, "This is my god," and then rubbed an American flag on the seat of his trousers and said, "This is your government" (R. 269–270, 280); and petitioner's former sister-in-law, Mrs. Ronsheimer, testified that in the presence of her and his wife petitioner kissed a photograph of Hitler (R. 305–306).

Petitioner asserted that he remained a member of the Bund only until the end of 1938 or the beginning of 1939 (R. 212, 353); but as late as May 1939, he wrote Schwinn, the district leader, on the letter head of "Amerikadeutscher Volksbund Freunde des Neuen Deutschland," addressing Schwinn as "Lieber Freunde und Gauleiter" (Dear Friend and Leader) and stating: "If you don't do something soon to hold San Francisco, then forget about all Local Groups north of Los Angeles. If you can't come yourself, then at least send somebody else, because there is still a lot of good material in S. F. which can perhaps still be held. I hope I may hear from you again, even though you do not count Petaluma except as an emergency." (Pl. Ex. 1, R. 243, 372–373.) Additionally, one of the government witnesses who had visited petitioner's home in January 1940

testified that at that time she saw a swastika banner or flag in his den and a swastika ring—which petitioner testified he had thrown away earlier—on his finger (R. 310–312).

ARGUMENT

The sole question involved here is whether the Government "has carried its burden of proving by 'clear, unequivocal, and convincing' evidence, which does not leave 'the issue in doubt'" (*Knauer* v. *United States*, 328 U. S. 654, 657–658) that petitioner procured his naturalization certificate in 1935 by a fraudulent oath that he was attached to the principles of our Constitution and that he would bear true faith and allegiance to the United States, forswearing allegiance to the German Reich. Petitioner contends that the Government did not meet this burden of proof, that the proof in the instant case is essentially no stronger than that in *Baumgartner* v. *United States*, 322 U. S. 665, and *Schneiderman* v. *United States*, 320 U. S. 118, that the Government merely proved his membership in the Bund, which is insufficient evidence upon which to base denaturalization, and that the courts below have erroneously imputed to him, solely on the basis of his membership in the Bund, a knowledge of and adherence to the principles and practices of that organization (Pet. 5–8, 39–66).

It is true, as this Court held in the *Knauer* case (328 U. S. at 669), that membership in the

Bund alone is not a sufficient basis for denaturalization or for an inference of adherence to the principles and practices of the Bund. We submit, however, that petitioner's activities show more than mere membership; they show that he fully understood and adhered to the principles and practices of the Bund and that he actively espoused the Bund's cause. While the evidence may not be quite as strong as that adduced against Knauer, nevertheless it manifests most, if not all, of the factors upon the basis of which this Court concluded in the latter's case that the judgment of the denaturalization was proper.

Knauer, this Court said, followed "a clear course of conduct, of which membership in the Bund was a manifestation, designed to promote the Nazi cause in this country," 328 U. S. at 669. The same was true of petitioner. The evidence demonstrates that he was a member of the Bund's predecessor, the Friends of New Germany, prior to his naturalization, and also that prior to his naturalization he went to Los Angeles to meet Herman Schwinn, the district leader of the organization, apparently to plan the formation of the unit in Petaluma. Here, as in Knauer's case, it is clear that "the case against [petitioner] is not constructed solely from his activities subsequent to * * * the date of his naturalization. The evidence prior to his naturalization, that which clusters around that date, and that which follows in the next few years is completely con-

sistent. It conforms to the same pattern." 328 U. S. at 668. When the Petaluma group was organized, petitioner was admittedly chosen as its head, or, as he put it, as "chairman." The evidence further shows that petitioner attended many meetings of the Bund, both in Petaluma and San Francisco, that he wore the official uniform of the O. D. and participated in the various symbolic salutes and songs of the Bund. His position as a local leader was also evidenced by the facts that he arranged a reception for Schwinn and for the showing of German propaganda films, that he prepared notices for such events, and that as the head of the Petaluma group, he supervised collections for German Winter Relief. He actively promoted and defended the Bund cause by writing letters to other organizations in support of the Bund and by speaking on its behalf and in explanation of its principles before an American Legion group. Moreover, the evidence shows that petitioner carried his adherence to the Bund cause over into his personal life, wearing a swastika ring and having characteristic Nazi paraphernalia such as flags and a picture of Hitler in his home. Additionally, there was evidence that petitioner had at one time in the presence of other persons kissed a picture of Hitler.[5]

[5] Petitioner attacks the testimony of Mrs. Rahunc, his former mother-in-law (see Pet. 47–51), concerning this incident. Concededly, Mrs. Rahunc's credibility is open to some doubt, as the district court stated (R. 53), because of her admitted

These activities were obviously far more than mere isolated or ill-considered incidents. As the Court said of *Knauer* (328 U. S. at 669), "This is not a case of an underling caught up in the enthusiasm of a movement, driven by ties of blood and old associations to extreme attitudes, and perhaps unaware of the conflict of allegiance implicit in his actions." On the contrary, petitioner's activities in their totality clearly demonstrate that he was an enthusiastic leader and promoter of the alien Bund cause.

In these circumstances, there is no occasion to impute to petitioner knowledge of and adherence to the principles and practices of the Bund. Petitioner is an astute person (cf. *Knauer,* 328 U. S. at 669) who must have understood the significance of his and the Bund's activities. This is apparent from the fact that he was, by his own assertions, a successful business man and a leader in the community (see, e. g., R. 330–332) and the further fact that he was selected as the spokesman or chairman of the Petaluma group of the Bund. In the face of the evidence of his activities as leader of the local group and in writing and speaking on behalf and in defense of the Bund, petitioner's protestations that although he attended meetings at which various Bund leaders

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animosity toward petitioner. However, there is no basis in the record for suspecting the credibility of petitioner's former sister-in-law, Mrs. Ronsheimer, who also testified that she saw petitioner kiss a picture of Hitler (see p. 9, *supra*).

spoke, he did not listen to them or stepped out of the hall while they were talking (see, e. g., Pet. 19), and that although he received and "glanced at" Bund literature and German papers, he never absorbed any of the basic Nazi and Bund doctrines (see, e. g., R. 216, 235), are simply incredible. In fact, the tenor of his speech to the American Legion group and of his correspondence on behalf of the Bund shows that petitioner asserted and therefore must have acted upon the premise that organizations can only be judged after a thorough analysis of their purposes and activities. Accordingly, it is unmistakably inferable that petitioner himself must have evaluated and appreciated the purposes of the Bund and that he embraced as his own those Nazi principles and purposes which have so often been recognized as being wholly incompatible with allegiance to the United States and abjuration of loyalty to Hitler and the German Reich (see *Knauer* v. *United States,* 328 U. S. at 661–662). Finally, petitioner's efforts to exculpate himself by asserting that he was not aware of the true aims and purposes of the Bund must be appraised in the light of the trial judge's appraisal of his credibility (R. 54):

> Defendant made an unfavorable impression upon the Court while on the witness stand, was evasive in his anwers and I do not believe, in view of all of the evidence, his statements that he was not aware of and did not subscribe to the "leadership prin-

ciple" or the "blood doctrine" or the anti-Jewish preachments. If there were the slightest doubt in my mind, I would resolve it in his favor because of the requirement that the government's case must be proved beyond a reasonable doubt by the most convincing testimony. I am satisfied that at the time he took the oath of allegiance, he mentally reserved allegiance to Germany and to the principles of National Socialism and that he believed in these doctrines during the period of his membership in the "Friends of the New Germany" and the Bund.

CONCLUSION

The findings and judgment of the district court are fully supported by clear, unequivocal and convincing evidence that petitioner obtained his naturalization in 1935 by fraud. Accordingly, we respectfully submit that the petition for a writ of certiorari should be denied.

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